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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/379,851	08/24/1999	FRANK EDWARD JOUTRAS	558-9-13-1	1814

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EXAMINER

POTHIER, DENISE M

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/379,851

Applicant(s)

JOUTRAS ET AL.

Examiner

Denise M Pothier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Summary*

1. On July 12, 2001, an office action was sent to applicant rejecting claims 1-12 and withdrawing claims 13-24 from consideration. Applicant responded on 10-15-01, amending claims 5-6.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Whitelaw. See paragraph 5 of the previous office action

### ***Claim Rejections - 35 USC § 103***

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Airy in view of Whitelaw. See paragraph 7 of previous office action.

5. Claims 2-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Airy in view of Whitelaw as applied to claim 1 above, and further in view of Stark. See paragraph 8 of the previous office action.

***Double Patenting***

6. Claims 1-2 and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,788,618. See paragraph 10 of the previous office action.

7. Claims 4, 10 and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,788,618 in view of Whitelaw. See paragraph 11 of the previous office action.

8. Claims 3, 5-6 and 8-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,788,618 in view of Stark. See paragraph 12 of the previous office action.

***Response to Arguments***

9. Applicant's arguments filed 10-15-01 have been fully considered but they are not persuasive. Applicant argues that the "means for adjusting the resistance in the friction means" recited in claim 1 is not equivalent to applicant's means for adjusting the resistance in the friction means since language on page 39 relating to tracking is incorporated into the means. The examiner disagrees.

The means for recited in claim 1 addresses a "means for adjusting the resistance in the friction means" and not a means for tracking or aligning. The "wherein" phrase is viewed as functional language that is not part of the "means for." Also, the "wherein"

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phrase recites the function of the friction means and does not further describe the means for adjusting resistance. As such, the examiner does not view the means for adjusting the resistance as a means for tracking or aligning. If applicant believes that the means are coextensive, please provide an adequate written description setting forth the supporting structure, material or acts corresponding to the means-plus-function in the specification. See MPEP 2181.

As such, the examiner believes that Whitelaw has an equivalent means for adjusting the resistance in the friction means (col. 2, l. 62-70) to applicant's (p. 45, l. 5-9). Note, means-plus-function language is given its broadest reasonable interpretation during examination.


With respect to the double patenting rejection, applicant argues that the claims 1-7 of U.S. Patent 5,788,618 (hereinafter '618) do not recite the language corresponding to the last paragraph. The examiner disagrees. Claims 1-7 of '618 recites a resistance means for varying resistance by friction between two sections (or between a friction means). Thus, the resistance means is for varying resistance, just like, the "means for adjusting the resistance in the friction means" recited in claim 1 of the present application. See also the above discussion of interpretation of the "means for adjusting the resistance in the friction means."

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Denise M. Pothier whose telephone number is 703.308.0993. The examiner can normally be reached on Monday-Thursday and

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alternate Fridays. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9302 for regular communications and 703.872.9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Everett Williams whose telephone number is 703.305.1708.



Denise Pothier  
Primary Examiner  
December 22, 2001